

**WTC Community-Labor Coalition
Presentation
to the
EPA WTC Expert Technical Review Panel**

June 12, 2005

Presented by:

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and**

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This presentation is based, in part, on the
WTC Community-Labor Coalition meetings held on
June 22, 2005 and July 6, 2005.

INTRODUCTION

- These comments refer to EPA's June 30, 2005 Draft Final Proposed Sampling Program
- Plan is a profound disappointment as it fails to incorporate the vast majority of requests made by the WTC Community-Labor Coalition and panel members at the May 2005 panel meeting for corrections of significant flaws
- Presentation will focus on these previous requests and what the EPA has, or has not, changed in the latest plan

ACCESS

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At the May 24th panel meeting

- Majority agreement, including panel members, that the right to access buildings granted only to building owners/managers could doom plan due to low participation and non-representative sampling.

The WTC Community-Labor Coalition requested

- Decisions about access should not be left to building owners/managers (who typically do not live or work in the affected buildings).
- Workers should have the right to volunteer to have their workplaces sampled.
- Residents should have the right to have homes and building common areas sampled.
- Information should be collected (e.g., building type, location, type of ventilation system, cleaning history) on buildings that refuse to volunteer to determine participation bias and whether volunteered buildings are representative of all eligible buildings.
- A “Participation Task Force” comprised of representatives of the panel, agency personnel, labor, business, and the community should be created to explore government agency legal rights of access, as well as, ways to maximize involvement.

ACCESS

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What the EPA has done to address these concerns

NOTHING

GEOGRAPHIC AREAS FOR SAMPLING

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At the May 24th panel meeting

- Community noted that sampling boundaries were determined by only one day's photograph of outdoor dust.
- No photographs or other indicators of the path of the fire plume.

The WTC Community-Labor Coalition requested

- Use a more inclusive set of photographs that show the dust and fire plumes and secondary sources of contamination, (i.e., debris transport and waste transfer), over time, as well as other indicators such as documented adverse health effects, to determine geographic boundaries and characterizations.

GEOGRAPHIC AREAS FOR SAMPLING

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What the EPA has done to address these concerns

NOTHING

SAMPLING DESIGN

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At the May 24th panel meeting

- The EPA was asked for statistical calculations used by the agency to determine sample size, power, error rates, etc.
- The EPA was questioned as to whether the “Spatially Balanced Sampling Methodology” (Stevens and Olsen 2004) was appropriately applied to the issues of WTC contamination in the urban NYC environment.

SAMPLING DESIGN

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What the EPA has done to address these concerns

NOTHING

CONTAMINANTS OF POTENTIAL CONCERN (COPCs)

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At the May 24th panel meeting

- EPA eliminated silica as a COPC without any discussions at previous panel meetings and without adequate justification.

The WTC Community-Labor Coalition requested that

- Silica be returned to the list of COPCs.
- Mercury and dioxin be included in the list of COPCs.

CONTAMINANTS OF POTENTIAL CONCERN (COPCs)

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What the EPA has done to address these concerns

NOTHING

CONTAMINANTS OF POTENTIAL CONCERN (COPCs)

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Instead, the EPA includes several specious and unconvincing arguments for excluding silica, dioxin and mercury, e.g., “silica is a major component of the earth’s crust.”

- The fact that silica is a major component of the earth’s crust is not a rationale for excluding it from the list of COPCs; asbestos is a naturally occurring mineral and lead is a naturally occurring metal; silica is a known human carcinogen.
- According to the EPA, even though there were exceedances of dioxin (wipe samples) and mercury (wipe samples) in the residential testing and clean-up program, there weren’t enough exceedances.
- Normal blood mercury levels of Port Authority officers is not a rationale for the exclusion of mercury in the sampling plan; this sampling plan is not linked to biological sample results.
- Results of ongoing ambient, outdoor, mercury vapor monitoring during the 2005 demolition at 4 Albany St., where presumably decontamination is occurring inside, are not applicable to the sampling plan and are not a basis for exclusion of mercury in the sampling plan.

“ACCESSIBLE”, “INFREQUENTLY ACCESSED”, AND “INACCESSIBLE” LOCATIONS

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At the May 24th panel meeting

- We stated the terms “accessible”, “infrequently accessed”, and “inaccessible” were inappropriately applied and misleading.
- The plan deemphasized areas most likely to harbor remaining WTC contamination and instead gave more weight to areas most likely to have been repeatedly cleaned in the almost four years since 9/11.
- The plan allowed for the continued, chronic exposure of workers and residents to 9/11 contamination.
- “Infrequently accessed”, and “inaccessible” locations as defined by the EPA are accessed by thousands of workers (maintenance workers, electricians, telecommunications workers, etc.) on a daily basis - - these areas are their workplaces.
- Other office workers and residents also access “infrequently accessed”, and “inaccessible” locations

The WTC Community-Labor Coalition requested that

- The terms “accessible”, “infrequently accessed”, and “inaccessible” are misleading, falsely applied and should not be used to mischaracterize the risks of potential exposures.
- “Infrequently accessed”, and “inaccessible” areas are most likely to harbor remaining WTC contamination and a greater emphasis should be given to these areas, (i.e., more samples collected and the results from these areas should weigh more heavily in the decision-making criteria for clean-up).
- Samples from “inaccessible” locations should be collected and analyzed separately, (i.e., do not use a composite sample).

“ACCESSIBLE”, “INFREQUENTLY ACCESSED”, AND “INACCESSIBLE” LOCATIONS

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What the EPA has done to address these concerns

NOTHING regarding “inaccessible” locations.

Minimal changes in moving a location, e.g., under a bed, to another category.

“ACCESSIBLE”, “INFREQUENTLY ACCESSED”, AND “INACCESSIBLE” LOCATIONS

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- EPA continues to ignore the fact that thousands of workers access so-called “inaccessible” locations every day to do their jobs.
- Elevated levels of contamination found in “inaccessible” areas will not trigger a clean-up, thus allowing the continued exposure of groups of workers to these contaminants on a daily basis and the potential exposure of residents and other workers.

BENCHMARKS FOR CLEANUP

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At the May 24th panel meeting

- The WTC Community-Labor Coalition pointed out that the areas most likely to contain WTC contamination are either assigned higher benchmarks to trigger a cleaning or won't trigger a cleaning at all, (i.e., results from HVACs and "inaccessible" areas) no matter what COPC levels are found.
- The levels of contamination should not be differentiated so as to leave higher levels of contamination in various locations of an apartment or workplace.

The WTC Community-Labor Coalition requested that

- The same benchmarks used for "accessible" locations should be applied to all other locations.

BENCHMARKS FOR CLEANUP

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What the EPA has done to address these concerns

- NOTHING regarding benchmarks in “inaccessible” locations accessed regularly by groups of workers and potentially by residents and other workers, (i.e., there are still NO benchmarks and results of contamination in these areas will NOT trigger cleaning!)
- NOTHING regarding the benchmark for lead in “infrequently accessed” locations, such as a window trough - - it is still 10X higher than the benchmark for “accessible” areas.
- NOTHING regarding the benchmark for PAHs in “infrequently accessed” locations, such as a window trough - - it is still 10x greater than the benchmark for “accessible” areas.
- TOO LITTLE regarding the benchmarks for asbestos and MMVF in “infrequently accessed” locations. (Although reduced by half, still unacceptably high and 10X higher than the benchmarks for “accessible” areas!)

BENCHMARKS FOR CLEANUP

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The EPA's explanations for these benchmarks are erroneous for the following reasons:

- No scientific rationale for arbitrarily applying the HUD factor of 10 (difference of lead clearance for floors compared to window troughs) to PAHs or any other contaminant.
- No scientific rationale for choosing the approximate midpoint between the two ASTM experience standards for asbestos of 10,000 s/cm² (“above background”) and 100,000 s/cm² (“significant releases”) as the benchmark for asbestos in “infrequently accessed” locations.
- No scientific rationale for using a benchmark for MMVF in “infrequently accessed” locations based upon a 10% dilution estimate of MMVF in WTC dust.

HVACS

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At the May 24th panel meeting

- We pointed out that the sampling plan did not adequately address the sampling or cleaning of HVAC systems.

The WTC Community-Labor Coalition requested that

- More samples should be collected from HVAC units, including bends in ducts where contamination can settle.
- HVAC samples should be analyzed separately to identify contaminated locations and not combined into composite samples.
- Sampling results from HVAC units should be used to determine whether HVAC units should be cleaned and should factor more heavily in the building clean-up decision making process.

HVACS

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What the EPA has done to address these
concerns

WORSE THAN NOTHING

HVACS

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- EPA will still use only four composite samples taken from HVACs (outdoor air inlets to HVAC, air mixing plenums serving sampled floors, HVAC outlets discharging to floors being sampled, and filters).
- There are still no benchmarks for cleanup of HVACs and elevated levels of contamination alone in HVACs will not trigger a cleaning of the HVAC unit.
- HVACs will only be cleaned if signature present in HVAC and a whole building clean-up triggered by the 95% UCL criteria.
- However, if decision to offer whole building cleaning is borderline and the HVAC contains the signature, air samples will be taken at HVAC outlets to common areas of buildings - - this will be evaluated along with HVAC and full building results, and source attribution surveys to determine whether there should be yet even more HVAC sampling or cleanup.
- Air sampling was previously rejected by the panel as completely inappropriate for inclusion in the sampling plan at this point in time (almost four years post 9/11).

NO VALIDATED SIGNATURE: DECISIONS FOR CLEAN-UP

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- In the absence of a signature, the EPA will offer a voluntary test and clean (if necessary) program targeted at the area south and west of Canal, Allen and Pike Streets, river to river.
- Owners and managers of residential or commercial buildings can request to have their buildings' common areas and HVAC system tested and cleaned (if necessary).
- Residents can request to have their apartments tested and cleanup will be offered if there is an exceedance of a COPC benchmark in an "accessible" or "infrequently accessed" area.
- The geographic scope of the EPA's previous Residential Testing Program was not adequate then and would not be adequate now.

For workers it is even worse:

- There is **NO** "Plan B" for workers if there is no signature – Without a signature, EPA completely washes their hands of workers and employers.
- EPA suggests that workers file a complaint with OSHA or request a Health Hazard Evaluation (HHE) from NIOSH.

NO VALIDATED SIGNATURE: DECISIONS FOR CLEAN-UP

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This suggestion is completely inappropriate for the following reasons:

- The EPA's sampling program and an OSHA complaint or NIOSH HHE are not comparable at all, so the EPA is essentially suggesting that different criteria and endpoints are applied to workers compared to residents.
- The EPA is saying that the EPA will fund a clean-up for residents and building owners/managers, when warranted, but that employers should shoulder the costs of clean-up of 9/11 contamination in workplaces.
- OSHA and NIOSH can't address the problem of testing and clean-up of 9/11 environmental contamination.
- OSHA enforces OSHA standards; there are no OSHA standards that apply to this situation or that would lead to a clean-up.
- Workers can only file an OSHA complaint against their employer, not against buildings they may work in.
- The EPA is already fully aware that OSHA is not a remedy for 9/11 contamination in workplaces. The issue of jurisdiction was made clear when discussed at meetings between EPA, OSHA, and many labor unions beginning in 2002 when labor formally asked EPA, "What about workplaces?"

NO VALIDATED SIGNATURE: DECISIONS FOR CLEAN-UP

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- NIOSH could not possibly conduct the same kind of sampling program in scope that the EPA would conduct.
- NIOSH does not conduct clean-up.
- NIOSH HHE's are voluntary (with cooperation from employer) and NIOSH recommendations are not enforceable, so even with an HHE a clean-up would be unlikely.
- EPA has agreed to include workplaces in this sampling program and cannot exclude workers from a sampling and clean-up program if there is no signature.

SOFT SURFACE TESTING

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At the May 24th panel meeting

- The WTC Community-Labor Coalition stated that wipe sampling alone is not an appropriate method to test for contaminants harbored in soft surfaces for close to four years.

The WTC Community-Labor Coalition requested that

- The EPA should evaluate and compare more suitable methods already demonstrated to be effective for capturing lead and PAHs in soft surfaces.

SOFT SURFACE TESTING

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What the EPA has done to address these concerns

NOTHING

SOFT SURFACE TESTING

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The sampling method EPA proposes to use for sampling PAHs, “ASTM D6661-01 Standard Practice for Field Collection of Organic Compounds from Surfaces Using Wipe Samples,” is **NOT** recommended for use on soft surfaces.

Excerpt from “ASTM D6661-01 Standard Practice for Field Collection of Organic Compounds from Surfaces Using Wipe Samples”

Scope

- 1.3 This wipe sampling practice is **not** recommended for collecting samples of organic compounds from rough or porous surfaces such as upholstery, carpeting, brick, rough concrete, ceiling tiles, and bare wood. It is also not intended for the collection of dust samples (see Practice E1728) or sampling to estimating human exposure to contaminated surfaces.

SIGNATURE RESEARCH AND PEER REVIEW

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At the May panel meeting, we requested

- Continue with the signature research but do not tie it to clean-up decisions in the sampling plan
- Disclose the data and complete results of the fire signature research
- Answers for many questions, including how the is EPA determining what constitutes a “significant quantity” of the signature compared to samples collected immediately after 9/11 close to the site

In our June 30, 2005 letter to Chairman Oppelt, we requested

- Signature validation peer review to operate as a full and transparent public process, with opportunities for input by the WTC panel and for participation by the public.

In Senator Clinton’s June 29, 2005 letter to EPA Administrator Stephen Johnson, she requested

- “To justify the use of the signature as a cleanup trigger, I think it is critical that the EPA peer review not only the methodology used to confirm the signature that EPA has developed (as called for by the plan), but also should have the approach, data and methods underlying the entire design and development of the signature subjected to an independent, balanced peer review process that affords the opportunity for public input.”

SIGNATURE RESEARCH AND PEER REVIEW

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What EPA has done to address these concerns

NOT ENOUGH

SIGNATURE RESEARCH AND PEER REVIEW

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“EPA has initiated a contractor-managed independent peer review of the WTC signature study hypothesis and validation results. EPA will identify areas of expertise needed for the review ... I have committed to share the draft charge questions for the peer review with the panel members for input when it is ready. OMB does not ask agencies to seek comment on charge questions.” (July 8 letter from Oppelt)

SENSITIVITY OF TESTING METHODS AND ANALYSIS

- EPA has not discussed the steps it will take to ensure adequate sensitivity of test results.
- If testing equipment, methods and analysis cannot detect down to background levels, the resulting data will be of very limited use in determining the extent of WTC contamination.

INDEPENDENT MONITOR

- EPA's quality assurance/quality control plan fails to include an independent monitor on behalf of the affected community of residents and workers.
- EPA's 2002 clean-up program was the subject of numerous complaints with regard to sampling methods used, protections for workers, warnings to residents and other issues. These problems cast doubt upon the reliability of EPA's testing results.
- EPA must provide funding for an independent monitor to be selected by the WTC Community-Labor Coalition to "spot-check" and help ensure that environmental sampling and testing is done properly.

Unmet Public Health Needs

9/11-related Demolitions

- 4 Albany Street
- 130 Liberty Street
- Fiterman Hall
- 130 Cedar Street
- 133-135 Greenwich and 21-23 Thames Street

CONCLUSION

- The EPA's June 30, 2005 Draft Final Proposed Sampling Program still contains many fundamental, serious flaws.
- These flaws can be corrected.
- The WTC Community-Labor Coalition continues to be committed towards working with the agency to correct these flaws and salvage the sampling program.